

[Case Title]Blue Water Plastics Co.,Plaintiff v Harris, Debtor/Defendant

[Case Number] 83-00025

[Bankruptcy Judge] Arthur J. Spector

[Adversary Number] 83-0123

[Date Published] January 23, 1986

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

In re: JON WILLIAM HARRIS and
LINDA ANTONIA HARRIS,

Case No. 83-00025

Debtor.

BLUE WATER PLASTICS COMPANY,

Plaintiff,

-v-

A.P. No. 83-0123

JON WILLIAM HARRIS and
LINDA ANTONIA HARRIS,

Defendants.

APPEARANCES:

MICHAEL J. SUGAMELI
Attorney for Plaintiff

JAMES J. ZIMMER
Attorney for Defendant

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At a session of said Court held in the Federal
Building in the City of Flint, Michigan on
the 23rd day of January, 1986.

PRESENT: HON. ARTHUR J. SPECTOR
U.S. BANKRUPTCY JUDGE

On April 5, 1983, the plaintiff brought suit against the
debtors, husband and wife, to have its claim of \$50,000 plus interest

declared nondischargeable on the theories that the debt was incurred as a result of their obtaining money from the plaintiff by "false pretenses, a false representation, or actual fraud", 11 U.S.C.

§523(a)(2)(A); and as a result of their "fraud or defalcation while acting in a fiduciary capacity", §523(a)(4). The defendants denied each of the material allegations. A lengthy period of pre-trial discovery ensued. The case was tried over all or parts of five days. The trial saw the testimony of 11 witnesses and the introduction of 81 exhibits. The case was vigorously yet professionally fought. The following are the Court's findings, pronounced in accordance with Bankruptcy Rule 7052, incorporating F.R.Civ.P. 52.

1. At all times relevant hereto, Jon William Harris ("Harris") and his wife, Linda Antonia Harris ("Mrs. Harris") were the sole or controlling shareholders of Jo-Inda Enterprises, Inc. and J & L Leasing Company, two Michigan profit corporations.

2. At all times relevant hereto, Harris was the president and a director of these corporations, while Mrs. Harris worked as a secretary in each.

3. J & L Leasing Company was an "asset-holding" company, while Jo-Inda Enterprises, Inc. was a manufacturing company, which primarily produced boat trailers, certain chemicals, cherry picker lifts and engine stands.

4. Jo-Inda Enterprises, Inc. had "subsidiaries", styled

"Energy Transfer Systems," "Solar Transfer Systems", "Injection Transfer Systems," and "Torque Transfer Systems".

5. Energy Transfer Systems' ("ETS") mission was to perform research into applications for solar and other forms of energy and to manufacture, market and install geothermal modular devices.

6. Solar Transfer Systems' ("STS") mission was to perform product development research in the solar energy area only.

7. Injection Transfer Systems' ("ITS") mission was to develop and do market research for products made of plastic, butyl rubber, aluminum castings and any other materials which may be injection molded.

8. Torque Transfer Systems' ("TTS") mission is unknown.

9. In the autumn of 1981, Harris had plans for the design, development, manufacture and marketing of a variety of new products through one or more of these subsidiaries or new ones to be formed: a solar/geothermal heating unit; a magnetic shower curtain holder; and a reverse helix impeller (to be used for a variety of applications, including as a part for a heat pump for the proposed geothermal device, and, together with a barrel sleeve, as a paint stirrer).

10. In furtherance of his plans for the magnetic shower curtain holder, Harris had, on November 2, 1981, contracted one Kyle Burkett to be the "market research head" of STS and obtained from him a die and six barrels of polyethylene for making the product.

11. In furtherance of his plans for the impeller parts,

Harris obtained, prior to his meeting with the plaintiff on November 6, 1981, a prototype of the impeller. Shortly thereafter he hired Bruce Turcott to do drawings of the impeller in order to make a mold to produce the part.

12. In furtherance of his plans for the solar/geothermal heat pump, Harris had possession of a prototype of a reverse helix impeller for the heat pump, had done marketing studies, had designed the necessary pump, had done some local field testing, and had searched for at least a month for a company to supply them with the necessary pumps.

13. On November 6, 1981, Harris and representatives of Blue Water Plastics Company, ("plaintiff"), met and discussed the foregoing ideas. Harris presented a document (plaintiff's exhibit #3) which recited the transfer by ITS to the plaintiff of interests in six Nigre Bossi injection mold machines and certain contracts (to-wit: "General Motors contracts for 1982-1983 Truck Coach and bus mirrors . . . ; all Black & Decker proposed contracts; All A.C. Spark Plug proposed contracts; All Buick Motor Division contracts; All Simplicity Tractor supply contracts; All Lawnboy component contracts; All Solor (sic) energy components and affiliated injected mold parts") which came along with those machines, and a 1977 Seneca II airplane in addition to the free use of space at his companies' Bishop Airpark facility. No consideration was stated for these transfers.

14. In truth and in fact, on November 6, 1981, ITS had no

interest whatsoever in any airplane or real estate at Bishop Airpark. Its sole interest on that date in the injection molding systems and the specified contracts was as follows:

a. On October 28, 1981, TTS, ITS' sister firm, delivered its postdated check for \$25,000 to C & C Engineering of Mayville, Michigan for the purchase of the machines with the contracts. (Defendant's Exhibit A was an October 26, 1981 invoice from C & C to TTS for \$25,000, showing that it was paid October 28, 1981.) However, the deal was that C & C would hold the check. Not until November 26, 1981, when Harris gave C & C \$5,000 cash representing a 20% down payment toward the purchase, did C & C get any real money.

b. C & C owned the machines which were located in New Jersey and Mansfield, Ohio. The machines were used to manufacture products for various companies, including Black & Decker, Simplicity Tractor and Lawn Boy. In addition, through possession of these machines, C & C had opportunities to bid for work from other companies, including A.C. Spark Plug, Buick Motor Division of G.M. and the G.M. Bus and Coach Division.

15. Also in the November 6, 1981 meeting, Harris discussed with the plaintiff's representatives his plans for the magnetic shower curtain holder and the geothermal/solar projects, including the

geothermal pump and paint stirrer adaptation of the reverse helix impeller. Harris indicated that the plaintiff's commitment would entail an advance of \$300,000 over a period of time.

16. Shortly thereafter, the plaintiff obtained a Dun & Bradstreet report on Jo-Inda Enterprises, Inc., which provided a brief background of the company and disclosed that it was a going concern.

17. Harris and representatives of the plaintiff met again on November 18 and 19, 1981. The primary subject was the magnetic shower curtain holder.

18. Harris and the plaintiff's representatives met again on November 20, 1981. After reviewing their progress in the negotiations to date and discussing details with respect thereto, Harris indicated his desire to begin work on the projects immediately. He therefore prepared and delivered purchase orders requesting the plaintiff to produce 400,000 magnetic shower curtain holders, (without price term), 100,000 reverse helix impellers (no price term), and 100,000 barrel sleeves (once again no price term). Harris represented to the plaintiff that he had outlets for the paint stirrer device through Ace and Century Hardware chains and for the magnetic shower curtain holder through the Sears, Roebuck chain. Finally, Harris also indicated a need for an immediate \$50,000 to get busy. This \$50,000 was considered to be an advance on the ultimate \$300,000 financial investment Harris was requesting plaintiff to make for all of the various projects.

19. At the time of these meetings, plaintiff had spare molding capacity, and was looking for projects upon which to utilize it. This solar/geothermal project was very interesting to the plaintiff.

20. The plaintiff understood the \$50,000 to be a down payment on its plan to spend up to \$150,000 on the solar/geothermal project. The defendant represented that he needed the money right away to get started on this project, but did not represent that the entire \$50,000 was intended to be used on that project. In short, there was no meeting of the minds as to the purpose of the \$50,000 advance.

21. At the November 20th meeting, the plaintiff prepared a check on its own bank account made payable to Jon and Linda Harris in the amount of \$50,000 and tendered it to them. Shortly after their meeting, the Harris' endorsed the check over to a bank and opened an account in their own name with the proceeds.

22. Thereafter, despite the plaintiff's frequent urgings, only minimal progress was made by Harris and his companies to fulfill the expectations he raised in the plaintiff.

23. Subsequent to Harris' receipt of the \$50,000, the following occurred with respect to the projects in question:

a. On November 26, 1981, Harris delivered a new check in the amount of \$5,000 to C & C Engineering in substitution for the post-dated check for \$25,000 for the purchase of the

Nigre Bossi machines and accompanying contracts. When Harris determined that the machines were unacceptable, he cancelled the purchase agreement. As a result, Harris and his companies never obtained these machines nor any of the contracts which were intended to go along with them.

b. On December 1, 1981, one of Harris' employees, Jon Hull, the general manager of production, delivered the die for the magnetic shower curtain holder to the plaintiff so that it could manufacture samples to be used for marketing purposes. When it became necessary for the plaintiff to repair the die, one of Harris' companies paid \$500 to the plaintiff for the repairs. Finally, six barrels of polyethylene of unknown quality were stored at Harris' airpark office and were available for the plaintiff's use in the manufacture of the magnetic shower curtain holder.

c. Harris attempted to get Sears, Roebuck to approve the sample of the magnetic shower curtain holder but because the plaintiff refused to run samples without pre-approved Sears molded color chips, which Harris failed to obtain, no sample parts were ever manufactured and so no purchase order was ever obtained from Sears, Roebuck or any other retailer.

d. Out of the proceeds of the \$50,000, Harris spent only approximately \$1,500 for use in the geothermal project. This consisted of expenses for excavation, a solar heat

sink, p-rock and several hundred dollars of copper tubing.

This effort produced a prototype.

24. The balance of the \$50,000 was spent in reimbursing friends for their investments in or loans to Harris' various businesses, paying trade debt or as operating funds for other corporate ventures.

25. At all times relevant hereto J & L Leasing, Inc., Jo-Inda Enterprises, Inc. and each of the "subsidiaries" were insolvent in both the balance sheet sense and the sense that they were unable to pay their expenses when due. In addition, the defendants' personal financial condition was in severe disarray with significant creditor harassment.

26. Neither defendant (and especially not Mrs. Harris) made any representation of material fact to the plaintiff which was untrue at the time of the negotiations or at the time the \$50,000 was obtained.

CONCLUSIONS OF LAW

1. No formal express trust ever arose between the plaintiff and either defendant.

2. Consequently, at no time was either defendant in a "fiduciary capacity" with the plaintiff.

3. Plaintiff has failed to establish by clear and convincing evidence that either defendant obtained the \$50,000 paid to them by the plaintiff by virtue of false pretenses, representations or

actual fraud.

DISCUSSION

As is apparent from the length of time the Court held this case on reserve, this was an exceedingly close case. Although it is apparent to the Court that the plaintiff was victimized largely as a result of defendant Jon Harris' siren song, we are unconvinced that Harris said anything that was blatantly false. Instead, it appears that Mr. Harris himself was equally victimized by his prodigious imagination combined with his apparent lack of management skills, business acumen, and organizational ability.

The defense tried to ascribe Harris' conduct to a medical condition suffered by Mr. Harris about the time of these transactions; however, from the testimony, we are convinced that the conditions explained by Dr. Adams were not the proximate cause of the statements and actions of Jon Harris. Instead, we believe that Jon Harris had always had a grandiose personalty akin to a manic depressive type. Indeed, the evidence and the testimony with respect to the November 6, 1981 meeting manifest his hyperactive imagination and grandiose schemes well in advance of the onset of the blood sugar problem. Thus, the instant troubles were of Mr. Harris' own making and cannot be blamed upon a physiological condition.

Mr. Harris, by nature, is a con man; however, not only did he con strangers like the plaintiff, but he conned his family,

friends, co-workers and, most importantly, himself. With no background in business, he ventured out into waters far too deep. On a shoestring, he got others to invest in his imagination only. His imagination and ambition far surpassed his ability to accomplish. Mr. Sherry's letter and testimony are incorrect. Mr. Harris is not a "riverboat gambler"; a riverboat gambler gambles with his own money. Mr. Harris would more aptly be described as a pied piper: he got others to follow and invest their money, time and effort in his dreams. His failure to accomplish any of those dreams may be attributed to the fact that he had too many going at one time. We believe it is wise counsel not to invest in a person who has too many good ideas, for it is better that a person have one good idea and devote all his time and energies to the accomplishment of that dream, than to do as Mr. Harris, and fritter away good opportunities by a failure to follow through on any one of them. In this case, it appeared obvious that no one person could pull off as many different projects at the same time as Mr. Harris seemed desirous of doing. To some extent, the plaintiff, which appears to be a reasonably professional operation, should have known this, and been forewarned to stay away. By the same token, Mr. Harris' vague language during the negotiating stage, (acknowledged by the plaintiff's witnesses) should have been a tip-off that this man was all smoke and no fire. Terms such as "made available to you", should be a clue that the contracts were not in hand. Instead, very likely plaintiff's own great need for

work at those depressing times caused it to plunge ahead without taking adequate precautions. It hoped Mr. Harris was real, and so it assumed he was.

Mr. Harris, to this day, continues to fool himself. Notwithstanding the obvious financial difficulties both his businesses and his family suffered during this time period, he continued at trial to dispute such fact. Early in the case Harris admitted that there were several outstanding bad checks, post-dated checks and unpaid employees and trade creditors. Corporate minutes and the testimony of Linda Harris added further proof that the corporations and their shareholders were suffering financial difficulties. Notwithstanding these uncontroverted facts, Mr. Harris still maintained at the close of proofs that there were no financial difficulties at the time the \$50,000 was obtained. This patently absurd conclusion further bolsters the Court's view that Mr. Harris deceives himself more than others.

However, for all of Harris' deceptions and delusions, he had no intent to deceive or delude anyone but himself. This he succeeded in doing. As a result, the Harrises have suffered enough: they lost their home, their health, their personal and business assets, a good part of their family stability and probably their reputation. Although the plaintiff became entangled to its detriment in Harris' dreams of glory, it was as much a result of its own eagerness to believe that Harris' castles in the air were built upon a firm

foundation when in fact they rested on nothing more substantial than water vapor. This is not the sort of fraud that is meant to be actionable under §523(a)(2)(A). To find fraud in the circumstances disclosed in this case would be unjust, not just because of the punishment it would inflict on the Harrises, but also because the facts here just don't support that conclusion.

For all of the reasons stated herein, the Court will grant judgment to the defendants for no cause of action. Each party will bear its own costs. A judgment so stating has been entered contemporaneously herewith.

ARTHUR J. SPECTOR
U.S. Bankruptcy Judge